

1 **FINAL**

2
3 **MINUTES OF THE COTTONWOOD HEIGHTS CITY**
4 **PLANNING COMMISSION MEETING**

5
6 **Wednesday, July 21, 2010**

7 **6:00 p.m.**

8 **Cottonwood Heights City Council Room**
9 **1265 East Fort Union Boulevard, Suite 300**
10 **Cottonwood Heights, Utah**

11
12 ***ATTENDANCE***

13
14 **Planning Commission Members:**

15 **City Staff:**

16 Amy Rosevear, Chair
17 Lindsay Holt
18 James S. Jones, Alternate
19 Bradley Jorgensen
20 Jennifer Shah

Michael Black, Community and Economic
Development Director
Shane Topham, City Attorney

21
22 **BUSINESS MEETING**

23
24 **1.0 WELCOME/ACKNOWLEDGEMENTS – Chairman Rosevear.**

25
26 Chair Rosevear called the meeting to order at 6:03 p.m.

27
28 **2.0 CITIZEN COMMENTS**

29
30 (18:04:48) Dale Giles gave his address as 7045 Brent Lane. He asked about the Cadence Cove
31 property and whether citizens have to complain each time there is a request to get the existing fire
32 hazard removed. Chair Rosevear responded that weed abatement issues are handled by the Code
33 Enforcement Department. Mr. Giles did not think it should be necessary to contact the Code
34 Enforcement Officer each time they have a complaint. He remarked that he has seen the officer
35 drive by the property and was certain he is aware of the situation. City Attorney, Shane Topham,
36 reported that the planning commission has charge over land use issues. Growing weeds are
37 characterized as a nuisance that is outside of the planning commission's purview. It was
38 recommended that complaints be made to the City's Code Enforcement Officer who can be
39 accessed online or by calling the city office. Mr. Topham reported that by Code, weeds cannot be
40 over six inches tall. He explained that the city operates on a complaint basis and staff doesn't
41 actively seek out violations.

42
43 (18:06:52) James T. Jensen was present on behalf of the Overlook at Old Mill Homeowners'
44 Association. It seemed to him that there will still be changes to the text of the general plan
45 amendment. As a result, he thought it may be premature for the commission to take public
46 comment tonight since the proposed amended general plan is not available for the public to
47 comment on.

1 Chair Rosevear reported that a public hearing was not scheduled on that item this evening. She
2 explained that a text amendment would have to be circulated to the public and public comments
3 received before opening the issue up for public discussion. Community and Economic
4 Development Director, Michael Black, reported that there will be another public hearing on the
5 matter. When the changes are finalized and accepted by the commission, a public hearing will be
6 scheduled. The tentative date was set as August 18. Mr. Jensen thought it was more appropriate
7 for his comments to be made in relation to the final text.
8

9 Mr. Black explained how the text can be viewed by the public once it has been finalized. He
10 stated that following the next meeting, he will post the proposed revised document on the city's
11 website for review. Information will also be provided to the public on how to submit comments.
12 Mr. Jensen asked that the public be given sufficient time to access and study the document.
13 Mr. Black stated that the matter must be posted two weeks in advance of the meeting. He clarified
14 that what is proposed is a recommendation that the city's legislative body still has to review.
15

16 (18:11:32) Kelly Bollinger gave her address as 6706 Aqua Vista Cove in Mill Hollow. In talking
17 to her neighbors, she found none who support the proposed 12-story building. The residents feel
18 the proposed structure doesn't fit in and will further contribute to the existing traffic and access
19 problems. The citizens want the city to know they strongly oppose buildings taller than six
20 stories. With the existing project, the public was promised a great deal of green space that has not
21 come to fruition. Originally, the residents were told that the project would be similar to Research
22 Park, which was not the case. The residents of Mill Hollow and the Overlook are upset with how
23 many buildings are there. To add a 12-story building would only make a bad situation worse.
24

25 (18:13:21) Robin Bateman gave her address as 2807 Palma Way in Mill Hollow. She appreciated
26 the work of the planning commission and being able to make public comment. Ms. Bateman
27 referred to wording that states that the development is meant to serve the needs of the office
28 tenants. She encouraged the commission to serve the needs of the residents as well. She thought
29 that floating height balloons might give citizens an idea of the actual height of the 12-story
30 building. She reminded the commission that the developer was aware of the height requirements
31 when he purchased and developed the property. The residents are truly concerned and have the
32 best interest of the city at heart. She did not think it was right for the citizens to feel trumped by
33 one company who probably has self-serving interests at heart. Ms. Bateman reported that a few
34 weeks earlier she attended the city council meeting where Mr. Black commented on the difficulty
35 of changing the general plan, specifically with regard to language changes and cost. She
36 questioned why it is so difficult, what the cost is, and who pays for it. She recalled that Mr. Black
37 stated that because it is so difficult it "fundamentally can't happen". Ms. Bateman asked that a
38 limit be set in the city and that they determine what is desired long-term and abide by it.
39

40 Mr. Black clarified his comments and stated that when the matter was discussed previously the
41 commission discussed potentially rewriting the entire general plan. His comments at that time
42 related to timing. He estimated that the first version of the general plan cost approximately
43 \$50,000 and took six months to complete. The city hired consultants who were given a deadline
44 of July 13, 2005. As far as amending the general plan, Mr. Black noted that it happens frequently.
45 The map, for example, is amended from time to time. Since the city incorporated, he estimated
46 that five amendments have been made to the general plan map. There are times when language
47 changes need to be made as well. It was noted that citizens and applicants have the right to
48 propose changes. Chair Rosevear recalled Mr. Black's previous comments had to do with the

1 timing necessary to make the changes and respond to the applicant. She explained that completing
2 an entire general plan amendment takes about one year. In this case, a decision needs to be made
3 on the application under consideration within the next two months.

4
5 There were no further citizen comments.

6 7 **3.0 PUBLIC HEARINGS**

8 9 **3.1 The Planning Commission will hear public comment on a conditional use permit** 10 **request from Matthew Schutjer, who represents Clearwire. The applicant is** 11 **proposing to construct a 60-foot high monopole for wireless internet antennas, in** 12 **front of the Canyon View Elementary School, located at 3050 East Bengal Boulevard.** 13 **Prior to this meeting, the Planning Commission heard public comment on this item** 14 **during the April 7, 2010 meeting.**

15
16 (18:19:56) Mr. Black presented the staff report and stated that the application is for a monopole
17 loosely disguised as a flag pole at Canyon View Elementary School. A photo of the site was
18 displayed. Mr. Black's opinion was that it falls short of a flag pole application for a cell tower.
19 He explained that the code allows stealth flag poles in certain zones and that the proposed zone is
20 not one in which they are allowed. If stealthy enough, poles are allowed to be up to 80 feet in
21 height. The PF Zone where the tower is proposed requires poles have the stealth feature in order
22 to go through the process. The determination to be made was whether to require a stealth pole.

23
24 The co-applicant, Rocky Schutjer, gave his address as 2181 Hugo Avenue in Salt Lake City. He
25 reported that when he last met with the commission in April, they discussed the stealth nature of
26 the pole. The previous issue had to do with the pole's diameter. The pole proposed at that time
27 had a diameter of 38 inches. Since then, the applicants met with staff, the school district, and the
28 school's principal. They also walked the property and looked at alternative locations but found none
29 that were suitable. The goal is to make the pole as small as possible. The current application
30 proposes a pole that is 30 inches in diameter. They can use the smaller pole; however, to have the
31 antennas and equipment concealed on the inside of the pole, a minimum amount of space at the
32 top of the pole is required to house them. Mr. Schutjer stated that they looked at alternative sites
33 off property without success. The matter was brought back for public comment because of the
34 support of the community council.

35
36 (18:25:50) In response to a question raised, Mr. Schutjer indicated that the drawings submitted
37 feature a 30-inch straight shaft pole. They have worked with staff and are trying to comply with
38 the stealth nature of the ordinance language. He reported that there is a hole in coverage in the
39 eastern portion of the city that will be difficult to fill without this particular site.

40
41 Mr. Schutjer reported that they stayed with the existing location because there is an existing flag
42 pole on site in the same location. It is, however, only 8 or 10 inches in diameter. Setback
43 requirements also make it difficult to move the pole further east closer to residential on the east
44 and west sides.

45
46 (18:28:21) Commissioner Shah asked if what is proposed is the absolute minimum diameter that
47 can be constructed for this technology. Mr. Schutjer confirmed that it is. Mr. Schutjer was asked
48 about the possibility constructing a pole that resembles a tree. He indicated that such a pole would

1 not necessarily suit this parcel, is cost prohibitive, and requires more maintenance. He considered
2 such poles to be a good solution in the right setting.

3
4 Matthew Schutjer, the co-applicant, reported that the elementary school students have a limited
5 area in the rear of the building for a playground. The side yard would be the next alternative.
6 Other alternatives were discussed. Mr. Black stated that if a stealth flag pole is considered for the
7 purpose of going from a height of 60 to 80 feet in the CR or ORD zones, it must be tapered from
8 top to bottom. A stealth pole would have to be tapered as well. Mr. Schutjer stated that 60 feet is
9 the minimum height necessary for the pole to function properly. If heights of 70 to 80 feet are
10 allowed, equipment could be stacked with a narrower pole. Mr. Black indicated that that is not an
11 option.

12
13 (18:36:20) Commissioner Shah asked if the technology will work if the pole is placed on top of
14 the school. Mr. Schutjer stated that the school is not tall enough and it is not feasible to build a
15 structure on top of the building. Commissioner Shah asked if cellular communications companies
16 have considered the use of climbing towers as stealth units. She noted that they would benefit the
17 students as well by serving as playground equipment. Mr. Schutjer considered that to be an
18 interesting idea.

19
20 (18:38:18) Chair Rosevear opened the public hearing.

21
22 Sharon Okumura identified herself as the principal of Canyon View Elementary School and stated
23 that when they walked the property they explored alternative locations, which were determined to
24 be unsuitable. After discussing the matter with the community council, it was determined that the
25 only option was the existing flag pole. The proposal was made in January at which time the
26 community council conducted research and agreed to consider the proposal. They agreed to the
27 flag pole so that the pole is not conspicuous. Ms. Okumura stated that students play throughout
28 the day and activities take place on both the east and west sides of the school. Few students spend
29 extended periods of time in the front of the building. For that reason, she would not consider any
30 other location.

31
32 (18:41:56) Roberta Smith gave her address as 7398 South 700 East and identified herself as the
33 Canyon View Elementary Community Council Vice Chair. She stated that the council did not
34 take the matter lightly and began the process in January and voted in April. They investigated and
35 reviewed safety issues and in the end determined that the proposed site would be safe for the
36 students. Safety issues were discussed. The history of the discussion and review were presented.

37
38 (18:46:00) Kent Johnson gave his address as 3050 Brighton Circle. He assumed the district would
39 receive income from the pole and supported efforts to eliminate the hole in coverage. With regard
40 to the stealth nature of the pole, he did not consider it overly inconspicuous and compared its
41 appearance to a "bottle brush". Mr. Johnson identified other eyesores in the area and commented
42 that a high tension line runs down the street. He doubted one additional pole will make a
43 difference. He did not consider a 30-inch pole to be overly large and noted that some public
44 buildings have up to three flag poles.

45
46 (18:47:52) Paul Amans gave his address as 7898 DaVinci Drive and stated that he has owned his
47 home since 1992. He recalled a previous proposal for a cell phone tower made prior to the city's
48 incorporation. He expressed opposition at that time before the county commission where the

1 applicants addressed concerns about the radio waves emanating from the towers. The county
2 commission's decision was based largely on the risk to the community as a result of the waves
3 from the tower. He considered the proposed tower to be an eyesore. If the decision is based
4 solely on stealth, Mr. Amans did not believe a 30-inch pole qualifies. Mr. Amans reported that he
5 opposed a similar facility when it was proposed years earlier and will oppose it each and every
6 time a similar request is made.

7
8 City Attorney, Shane Topham, referenced the Communications Act of 1996 and explained that
9 federal law trumps state law and state law trumps city ordinance. The Act preserves the local
10 zoning authority's right to control cell towers. The city cannot prohibit personal wireless services
11 and there can be no discrimination among providers. In addition, a zoning regimen cannot be
12 created that is so strict that it effectively prevents these types of facilities from being allowed in
13 the city. Certain zones have been designated in the city where cell facilities are allowed.
14 Mr. Topham further indicated that action on a wireless facility's application has to occur within a
15 reasonable time. Denial of an application has to be in writing and supported by circumstantial
16 evidence on record. Finally, there can be no regulation on the basis of environmental effects of
17 radio frequency emissions to the extent that those facilities comply with FCC regulations.

18
19 (18:57:53) Edna Beadles gave her address as 2998 East Bengal Boulevard and identified her home
20 on the map displayed. She stated that from her front window she will see the flag pole and was
21 concerned that the tower will be intrusive because of its size.

22
23 Mr. Schutjer stated that Clearwire is a wireless internet company and reported that they have not
24 yet launched their network along the Wasatch Front. That event was scheduled to take place
25 August 1. The proposed site is crucial for their launch network. For the time being service will
26 not be available in this area. Stealth issues were discussed. While 30 inches is larger than the
27 applicant desires, they are doing their best to work within the constraints that are in place. A
28 narrower pole could be constructed if a greater height were allowed.

29
30 There were no further public comments. The public hearing was closed.

31
32 **3.2 The Planning Commission will hear public comment on a conditional use permit**
33 **request from Connie Misket, who represents Verizon Wireless. The applicant is**
34 **proposing to construct a 60-foot high monopole, designed to resemble a pine tree, for**
35 **wireless telecommunications antennas, on the south side of the Bella Vista**
36 **Elementary School, located at approximately 2131 East Fort Union Boulevard.**

37
38 (19:03:06) Mr. Black presented the staff report and stated that the proposal is for Verizon Wireless
39 to construct a 60-foot monopole at Bella Vista Elementary School. The proposed pole will be
40 designed to resemble a pine tree and located in the middle of the school property. A map of the
41 site was displayed. Staff's main concern had to do with the location. Another concern had to do
42 with the branches and whether they are scalable and the amount of support structures needed at the
43 base of the pole.

44
45 The applicant, Connie Misket, was present representing Verizon Wireless. She reported that they
46 worked with the school district and the principal to find the most suitable location. From the
47 street, the pole appears predominant but from the school it is some distance from the actual
48 building. The intent is to maximize use of the school's playing field. There is also a row of trees

1 with pine trees across the street. From virtually every direction, there are trees in the vicinity.
2 Photos were displayed including examples of stealth poles resembling trees. Ms. Misket stated
3 that the appearance of stealth poles has improved. She reported that a fence was planned around
4 the equipment shelter for security. Smaller trees will also be planted around the fence as well.
5 She stated that by providing extensive landscaping they are doing their best to comply with the
6 intent of the zoning ordinance. Ms. Misket stated that the proposed pole allows for co-location.
7 She reported that a community council meeting was held where support was expressed for the
8 project. An alternate location was proposed by a commission member. Mr. Black agreed to look
9 into it.

10
11 (19:16:08) Commissioner Shah recommended the addition of more deciduous trees around the
12 pole structure, particularly taller ones to help mitigate the size of the tower. Commissioner Holt
13 was concerned about the appearance from the street, particularly with regard to the wall.
14 Ms. Misket expressed a willingness to install chain link if desired by the commission. Mr. Black
15 commented that typically chain link fencing is not allowed. Another option was to eliminate the
16 fencing altogether. Other alternatives were discussed.

17
18 (21:19:52) Chair Rosevear opened the public hearing. There were no public comments. The
19 public hearing was closed.

20
21 A commission member wanted to further explore the possibility of moving the pole north and east
22 behind the church so that it is less obtrusive and off the street.

23 24 **4.0 ACTION ITEMS**

25 26 **4.1 The Planning Commission will take action on a conditional use permit request from** 27 **Matthew Schutjer who represents Clearwire. The applicant is proposing to construct** 28 **a 60-foot high monopole for wireless internet antennas, in the front of the Canyon** 29 **View Elementary School, located at 3050 East Bengal Blvd.**

30
31 (21:21:56) *Commissioner Jorgensen moved to deny the application as it currently exists based*
32 *on the subjective definition of stealth as spelled out in Section 19.8 of the City Code.*
33 *Commissioner Jones seconded the motion.*

34
35 Commissioner Holt asked if a motion can be made to continue the matter in order to allow the
36 applicant to make changes to the application rather than resubmit it and pay new application fees.
37 Mr. Topham suggested a denial be supported by findings and conditions. Commissioner
38 Jorgensen was not opposed to the request and asked that the applicant consider other options.

39
40 Chair Rosevear recognized the need for the proposed facility but thought perhaps there was a
41 better solution than the one proposed. She suggested the possibility of moving the pole further to
42 the east and requiring it resemble a tree. The need for the tower in the area was acknowledged.

43
44 Commissioner Shah's opinion was that none of the existing stealth technology is truly stealth in
45 the area. She remarked that she did not think poles that resemble trees work well here. She
46 agreed that functionally the applicant is meeting the needs outlined in the application.
47 Structurally, however, she did not think they were meeting the objectives of the code.
48 Commissioner Holt commented that she has seen very attractive poles that look like clock towers

1 that would be more appropriate than flag poles. She believed there were other options available
2 that have not been explored.

3
4 Mr. Schutjer's preference was to have the matter continued with precise direction from the
5 commission as to what they will approve. Mr. Black suggested the clock tower option be explored
6 further. Another option was to move the pole to the rear of the school against the building. He
7 understood Commissioner Shah's concern that the tree poles don't blend in but stated that
8 unfortunately, the technology is not available.

9
10 ***Commissioner Jorgensen withdrew his motion.***

11
12 ***(21:32:52) Commissioner Jorgensen moved to continue the matter and commented that the***
13 ***commission desires the pole have more stealth.***

14
15 Commissioner Jorgensen recommended a work session be scheduled with the applicant to discuss
16 other options.

17
18 ***Commissioner Shah seconded the motion.***

19
20 The work meeting was tentatively scheduled for August 4.

21
22 ***Vote on motion: Jennifer Shah-Aye, James S. Jones-Aye, Bradley Jorgensen-Aye, Lindsay***
23 ***Holt-Aye, Chair Amy Rosevear-Aye. The motion passed unanimously.***

24
25 **5.0 DISCUSSION ITEMS**

26
27 The issue of tall buildings and the general plan were discussed. Mr. Black stated that in reviewing
28 state code, he found that one requirement is that a public hearing be conducted when the decision
29 is made to amend the general plan. A second public hearing is required after a recommendation
30 has been decided upon by the commission but prior to a recommendation being made to the city
31 council.

32
33 ***(21:37:05) Mr. Black stated that he and other planning director's in the county interpreted the state***
34 ***code as requiring one public hearing at the planning commission level prior to it going to the city***
35 ***council. He clarified that another public hearing is required, which is scheduled for August 18 at***
36 ***6:00 p.m. For the sake of getting a good audio recording of the proceedings, the meeting was to***
37 ***be held at City Hall in the City Council Chambers. Mr. Black stated that the matter would be***
38 ***scheduled for tentative action if so desired by the commission. Another option is to separate the***
39 ***decision and the public hearing so that it is clear that the comments made at the public hearing are***
40 ***taken into consideration. The decision of whether to proceed with a decision that night or***
41 ***postpone it will be up to the commission. Procedural and timing issues were discussed.***

42
43 The meeting schedule for the remainder of the year was presented.

1 **6.0 APPROVAL OF MINUTES**

2
3 **6.1 July 7, 2010**

4
5 (21:56:29) The minutes were reviewed and modified.

6
7 (22:01:24) *Commissioner Jorgensen moved to postpone approval of the minutes pending the*
8 *inclusion of the procedural issues in the process the commission went through. Commissioner*
9 *Shah seconded the motion. Vote on motion: Jennifer Shah-Aye, James S. Jones-Aye, Bradley*
10 *Jorgensen-Aye, Lindsay Holt-Aye, Chair Amy Rosevear-Aye. The motion passed unanimously.*

11
12 **7.0 PLANNING DIRECTOR’S REPORT**

13
14 There was no Planning Director’s Report.

15
16 **8.0 ADJOURNMENT**

17
18 (22:02:02) *Commissioner Shah moved to adjourn. Commissioner Holt seconded the motion.*
19 *Vote on motion: Jennifer Shah-Aye, James S. Jones-Aye, Bradley Jorgensen-Aye, Lindsay*
20 *Holt-Aye, Chair Amy Rosevear-Aye. The motion passed unanimously.*

21
22 The meeting adjourned at 8:02 p.m.

1
2 *I hereby certify that the foregoing represents a true, accurate and complete record of the*
3 *Cottonwood Heights City Planning Commission Meeting held Wednesday, July 21, 2010.*
4
5
6

7 
8
9

10 Teri Forbes
11 T Forbes Group
12 Minutes Secretary
13

14
15 Minutes approved: